The History of Regulatory Compliance

As the real estate finance industry evolved, so did the need for consumer protection. The link below provides a brief look at the history of the mortgage industry in the United States and its evolving need for regulation.

* [Pre-WWII](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)
* [WWII to 1950s](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)
* [1950s - 1960s](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)
* [1960s - 1970s](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)

In the days **before World War II**, real estate transactions consisted of very few pieces of paper. When property owners needed to borrow money in order to build a home, farm, or ranch, they pledged their land as collateral.

From the **mid-1940s though the 1950s**, the United States saw a post-war housing boom. As veterans of World War II returned home to their families after the war, they were given an opportunity to finance their homes at favorable rates and terms made possible through loan guarantee programs such as those available through the VA. This wider access to credit, coupled with innovations in construction and homebuilding, such as the Levittown mass-produced suburbs, created a post-war housing boom. This boom saw an expansion of mortgage transactions, the number of organizations offering mortgages, and the paperwork involved in the origination process.

During the **1950s and 1960s**, prospective homebuyers were faced not only with more paperwork, but also more [service providers from which to choose](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)

**Service Providers**

Service providers in mortgage lending include the following:

* Land developers
* Homebuilders
* Real estate brokers
* Mortgage lenders
* [Title](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)

Written evidence of the right to or ownership in property.

insurance companies

* Mortgage insurers and guarantors
* [Secondary market](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)

The market where lenders and investors buy and sell existing mortgages or mortgage-backed securities, thereby providing greater availability for funds for additional mortgage lending.

agencies

. The industry was in need of rules to help borrowers identify service providers, understand financing terms, and receive disclosures of all settlement costs.

The **1960s and 1970s** saw great consciousness of racism and other forms of discrimination in mortgage lending. Character judgments of borrowers were the criteria for approval by lenders. Routinely, lenders did not count the salaried income of a married woman, assuming that she would soon leave her job to have children. In certain instances, a married woman may have been required to convey her plans for having a family in the future.   
  
Concerned citizens and consumer advocacy groups sought ways to assist and protect future homebuyers. The response was enactment by Congress of seven federal statutes, each intended to restore the trust our nation once knew in real estate conveyances and give encouragement to those who were being wrongly treated.

Fair Lending Laws Overview

From 1968 to 1977, there were several fair lending laws enacted to prevent discrimination in mortgage lending and support equal access to credit opportunities.

These laws include the following:

* Fair Housing Act
* Fair Credit Reporting Act
* Equal Credit Opportunity Act
* Home Mortgage Disclosure Act
* Community Reinvestment Act

The table below provides a brief description of the major fair lending laws. In the pages that follow we'll discuss the laws in more detail.

Fair Lending Laws

| **Year Enacted** | **Title** | **Description** |
| --- | --- | --- |
| 1968 | Fair Housing Act | Prohibits discrimination in the sale, rental, or financing of housing and the provision of brokerage and appraisal services based on race, color, religion, gender, national origin, physical or mental disability, or familial status (including the presence of children). |
| 1974 | Equal Credit Opportunity Act (ECOA) | Eliminates discrimination in the evaluation of an applicant’s creditworthiness, while preserving the creditor’s right to make judgments based on other credit-related facts.  Prohibits discrimination based on gender, color, race, religion, national origin, marital status, age, receipt of public assistance benefits, or exercising of any rights under the Consumer Credit Protection Act.  Enhancements as a result of the Dodd-Frank Act added requirements that lenders provide borrowers a copy of their appraisal in advance of closing. |
| 1975 | Home Mortgage Disclosure Act (HMDA) | Requires the collection, reporting, and disclosure of data regarding applicant and borrower characteristics in order to identify possible unfair lending patterns and to help enforce anti-discrimination statutes. This act also was enhanced as a result of the Dodd-Frank Act to require the collection of additional data intended to identify issues of predatory lending. |
| 1977 | Community Reinvestment Act (CRA) | The Community Reinvestment Act (CRA) is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations. |

# Fair Housing Act 1968

A civil rights law, the Fair Housing Act prohibits discrimination in the sale or rental of a residential property on the basis of race, color, religion, physical or mental disability, gender, age, national origin or familial status, including the presence of children. The provisions related to discrimination based on age and disability are contingent on the individual being legally qualified to enter into a contract (e.g. at least 18 years of age, etc.).  
  
The Fair Housing Act covers all activities of the real estate community, including real estate salespersons and [brokers](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)

An agent who brings buyers and sellers together and assists in negotiating contracts between them.

, builders and developers, apartment owners, sellers, mortgage lenders, and appraisers.

# Enforcement

The [Department of Housing and Urban Development (HUD)](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)

A governmental entity responsible for the implementation and administration of housing and urban development programs. HUD was established by the Housing and Urban Development Act of 1965 to supercede the Housing and Home Finance Agency.

 is the principal agency charged with eliminating discriminatory housing practices. HUD is responsible for implementing and enforcing the Fair Housing Act.  
  
HUD coordinates its investigations of alleged lending discrimination with the Department of Justice, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency, and the National Credit Union Administration.  
  
To learn more about HUD's role in enforcing the Fair Housing Act, please visit [HUD's web site](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp).

Equal Credit Opportunity Act

The Equal Credit Opportunity Act (ECOA), makes it illegal to discriminate on the basis of the following:

* Receipt of public assistance
* Rights exercised under the Consumer Credit Protection Act
* Race, color, religion, national origin, sex, marital status, or age

ECOA defines and governs the rules concerning pre-qualifying mortgage applicants, handling rate inquiries, evaluating applications, and retaining records.  
  
Under ECOA, a credit applicant must receive a written notice of adverse action stating the reason for adverse action within thirty days if credit was declined, withdrawn, or lack of activity on the part of the applicant led to cancellation. In industry parlance this is sometimes called a letter of credit denial. If a counteroffer was given and not accepted within 30 days, an adverse action notice needs to be given to the applicant. This process ensures that borrowers fully understand the reasons their application was not approved in order to prevent real or perceived discrimination.

Enforcement

Implemented by the Federal Reserve Board as Regulation B, the law is administered by the Consumer Financial Protection Bureau. All federal agencies that regulate lending institutions have the authority to enforce Regulation B.

# Home Mortgage Disclosure Act 1975

The Home Mortgage Disclosure Act (HMDA) was enacted by Congress so that the public and oversight agencies could monitor the lending activity of a financial institution and identify trends that might indicate discrimination.  
  
HMDA was expanded in 1989 to require lenders to report specific data concerning each applicant's characteristics (race, gender, and income) and again in 2004 to require lenders to report more information about the loan terms, high cost loans, certain requests for pre-approvals, manufactured homes, and lien position.   
  
On October 15, 2015 issued a new final rule that amends the types of institutions that are subject to Regulation C, the types of transactions that are subject to Regulation C, the specific information the covered institutions are required to collect, record, and report, and the processes for reporting and disclosing data. The CFPB final rule takes effect beginning in 2017; certain aspects become effective in 2018. For more information on the 2015 Rule, [please see the HMDA page in the regulatory implementation section of the CFPB web site.](http://www.consumerfinance.gov/regulatory-implementation/hmda/)  
  
The lender that makes the loan decision is considered the 'originating lender' who must report the data. Therefore, most mortgage brokers are not responsible for filing a HMDA report. (Under certain circumstances, a lender may be exempt from reporting. Please refer to <http://www.ffiec.gov/hmda/reporter.htm> for more information.)

Lenders must provide reports that disclose:

* Loan disposition
* Census tract
* Borrower characteristics
* Loan characteristics

Data collected under HMDA are used to help:

* The public determine if lending institutions are meeting the housing credit needs of their communities
* Public officials target community development investment
* Regulators enforce fair lending laws

# Enforcement

HMDA is implemented by Regulation C and is enforced primarily by the CFPB in cooperation with the OCC, the Federal Reserve Board, and the Federal Deposit Insurance Corporation (FDIC).

Community Reinvestment Act

The Community Reinvestment Act (CRA) is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations.  
  
CRA examinations are conducted by the federal agencies that are responsible for supervising depository institutions: the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency.  
  
The examinations include an emphasis on performance as opposed to process, and leveraging different evaluation tests for different types of institutions. Performance examinations include twelve assessment factors and an overall rating.

Enforcement

The CRA is implemented by Regulation BB and is enforced by The Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, and the Federal Deposit Insurance Corporation (FDIC).

Fair Housing Amendments Act of 1988

In 1988, Congress enacted the Fair Housing Amendments Act, extending the provisions of the Civil Rights Act to include the prohibition of housing discrimination against people with physical disabilities and families with children.  
  
In response to the strengthening of the 1988 Amendment regarding lending discrimination, HUD executed a Memorandum of Understanding with the United States Justice Department and expanded its technical assistance to include financial regulatory agencies. This gave HUD the authority to conduct an investigation even if a consumer had not filed a complaint.

Quality of Assistance Overview

What do the fair lending laws mean for a mortgage loan originator (MLO), processor, underwriter, or closer?  
  
An effective loan production associate will exercise fair lending practices as a natural result of providing exceptional customer service for each and every client. Following are specific principles inherent in a “quality of assistance” philosophy that help ensure compliance is integrated into everyday execution.

# Five Principles

There are five ways to achieve and maintain an outstanding level of quality of assistance. These are as follows:

* Be attentive to your customer as well as other details.
* Be responsive to the needs of your customer.
* Be illustrative in your discussions.
* Be a team player.
* Be consistent.

These principles should be applied at all times, including:

* At the time of initial inquiry
* During the loan application process
* During status calls or questions in the processing phase
* In discussing the loan decision and/or commitment conditions
* Throughout the scheduling and closing process

Click on the links below to learn more about each principle.

* [Be Attentive](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)
* [Be Responsive](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)
* [Be Illustrative](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)
* [Be a Team Player](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)
* [Be Consistent](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)

**Being attentive** requires active listening skills. The loan production staff should do the following:

* Find out what the customer wants.
* Make sure he or she understands the customer's individual needs.
* Ask what he or she can do to assist the customer.

At times the loan officer, processor, or other agent of the lender may need to restate something that the customer has says, such as by saying, "let me make sure I understand this." This will communicate to the customers that the associate is listening and taking their needs seriously without giving the client the impression they are being dismissed or condescended to. The mortgage process is complicated and an associate can very easily create the perception with a client that they are being dismissed or discriminated against by not taking the time to listen, follow-up, and validate questions from each and every client regardless of the circumstances.  
  
An associate can provide outstanding customer attentiveness by noticing and acknowledging the positive attributes of the customer's loan application and financial management choices. Recognizing compensating factors in a loan application or transaction conveys that every loan production associate has a vested interest in getting every credit-worthy customer's application approved and closed.   
  
Attentiveness to the customer shows sincerity, and by confirming or re-stating what was said, the originator makes an acknowledgement that he or she is listening and paying attention.

A second principle of quality service involves being **responsive**, such as saying something to reassure customers that they won't be forgotten after they leave or the phone conversation ends. The originator should be specific as possible about something positive he or she feels is memorable. This extends to ensuring that all calls and emails are responded to in a timely manner and setting expectations with respect to turn around times on calls in the evening and on weekends.   
  
The purchase or refinance of a property involves a complicated series of actions, all with consequences if deadlines are not met. The failure of an associate to respond in a timely manner for any reason might easily give customers the impression that they are not being treated fairly.

A third principal of quality of assistance service execution involves taking the time to **illustrate** common problems and misconceptions and help the customer to anticipate unforeseen events. The mortgage process is generally considered cumbersome with guidelines and requirements that may appear to the client to be burdensome or haphazard. In order to avoid the appearance of being unfair to a client, it is paramount that originators explain the source of any request, whether it be investor-initiated, agency-mandated or a regulatory requirement, and point out that it applies equally to all clients. Being helpful in this manner is perceived as being fair and reinforces the originator's desire to ensure the transaction is successful.  
  
An effective associate is proactive. He or she should advise the borrower at the onset that he or she will need to supply a number of documents; that changes from the time of application can cause the terms and conditions of the approval to change; and that the lender is at the mercy of various players in the process which they have a vested duty to represent.   
  
The originator should set expectations with respect to potential delays by advising the borrower that the expected date of closing is not guaranteed and that the loan process takes time. The originator should explain to the borrower the various situations that can result in a delay in loan approval or closing such that any delays are not perceived as unique to that client.   
  
By being illustrative in communications an associate can disarm situations where the lender appears to be “throwing a wrench in the works,” thereby minimizing situations where borrowers perceive discrimination or unfair treatment.

A commitment to fair lending must be a company-wide mission. It should be apparent to every customer that all employees at the lender are **team players** who are committed to principles of fair lending and to supporting the customer's access to credit opportunity.  
  
If the originator is the only one who has face-to-face contact with the customer, the person may feel that only the originator sees the positive (or negative) characteristics about the loan file.  
  
It is encouraging to the customer, however, when the originator takes the time to mention the names of the people of his or her team, and then to say, "My team and I work great together. Julie, for instance, never forgets to return a phone call, and I've seen our underwriter spend hours on a problem file, just to try to make it work."  
  
The customers knows that the originator cannot promise a commitment, but will be more likely to feel that everyone worked together to make sure that no detail was overlooked.

It is very important to convey to customers that an institution has **consistent** standards for processing loans and requesting supporting documentation for all customers.  
  
The associate should take the time to mention, when referring to an application checklist or an itemization of closing conditions, that everyone has to bring in the same list of items. A customer who is told that everyone must comply with the same rules and procedures will perceive equality.  
  
After making sure that the customer understands what is required and will be able to comply with the request, the associate should follow with a comment such as, "I always ask clients to provide their most recent 30 days paystubs and set aside future paystubs in the event we need to update them. This is appreciated by our processors and prevents delays."  
  
The loan officer should always ask applicants if all their questions have been answered; if they have any concerns; and provide contact information in case questions should arise during the application process. This transparency of communication, regardless of whether the application is taken face-to-face, online, or over the phone, diff

Types of Discrimination Overview

Inappropriate discrimination in mortgage lending may be overt or subtle. Reasons for discrimination can often stem from the corporate culture of the lending institution. Prejudice which has its origins at the top of the organization often filters down to senior managers, lending officers, and other members of the mortgage lending department. It can be perceived by employees as a standard way to do business.  
  
Some lenders have demonstrated a record or pattern where they have avoided making loans to certain minority groups. Or, they have been found guilty of charging excess fees to certain borrowers. Other cases have shown where there are two sets of product guidelines or interest rates.  
  
Management is responsible to take corrective action to eliminate any behavior or acts of racial bias or prejudice.

# Overt Discrimination

Overt discrimination on prohibited bases is easy to recognize. Examples of overt discrimination may include the following:

* A real estate agent that refuses to show certain properties or neighborhoods to a member of a particular group
* A landlord that refuses to rent a home or apartment to a member of a particular group

Overt discrimination can happen throughout the mortgage lending process. For example, it can occur after someone has found a home and entered into a sales contract but is discriminated against when trying to secure credit. It may also occur in cases related to second mortgages, home equity lines, of credit or refinance transactions, or homes owned by minorities.

# Disparate Treatment

Disparate treatment is overt discrimination. The existence of illegal disparate treatment may be established either by statements revealing that a lender explicitly considered prohibited factors ([overt evidence of disparate treatment](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)

**Overt Evidence of Disparate Treatment**  
  
Overt evidence exists when a lender openly discriminates on a prohibited basis. An example would be if a lender refuses to make loans to members of a particular ethnic group or people over a certain age.  
  
Overt evidence of discrimination also exists when a lender expresses a discriminatory preference but does not act upon it. An example would be if a lending officer told a customer, "We do not like to make home mortgages to Latinos, but law says we cannot discriminate so we will take your application."

) or by differences in treatment that are not fully explained by legitimate nondiscriminatory factors ([comparative evidence of disparate treatment](http://education.mbaeducation.org/courses/1/DL2-011177-WC-W/content/_167682_1/index.html)

**Comparative Evidence of Disparate Treatment**  
  
This occurs when a lender treats a credit applicant differently based upon one of the prohibited bases. It does not have to be intentional, but the difference in treatment is considered to be intentional because there is no credible, nondiscriminatory reason to explain why the difference occurred.  
  
This difference can occur in applicants who are neither clearly well qualified nor clearly unqualified, so-called "marginal" or "close case" applications. Issues can arise when an institution's credit or pricing policies are not well defined and/or lender discretion is broad, and exceptions are not properly approved and well documented. Differences can also arise if the lender provides an inconsistent level of assistance for "close case" applicants that are "similarly situated" but are treated differently on a prohibited basis.

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Two examples of disparate treatment include the following:

* **Redlining** - A form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents in the area in which the credit seeker lives or will live or in which the mortgaged residence is to be located. Redlining can violate both ECOA and the FHA.
* **Reverse redlining** - When applicants in low- to moderate- communities with protected classes of people are targeted for predatory loan products which have higher rates and fees and drain residents of their wealth.

# Disparate Impact

Disparate impact occurs when a lender applies a neutral policy or practice equally to all credit applicants, but this practice disproportionately excludes or burdens certain persons on a prohibited basis. If the policy is justified by a clear "business necessity," such as cost and profitability, it may be acceptable under the law, but the lender could still be found in violation if an alternative policy or practice could serve the same purpose with less discriminatory effect.  
  
Finding evidence of discriminatory intent is not necessary for examiners to find a disparate impact violation (evidence of disparate impac**t**) under ECOA or the Fair Housing Act.

# Evidence of Disparate Impact

For example, if a bank's policy required that it charge at least $3,000 in origination fees on every residential real estate loan in order to make a profit, this policy could have the effect of preventing low- to moderate-income applicants from being able to qualify for a mortgage loan. If all of the low- to moderate-income census tracts in that bank's lending area were predominantly minority, this policy could raise some examiner questions.

Examples of prohibited activities include the following:

* Failure to provide information or services, or providing different information or services regarding any aspect of the lending process, including availability of credit, application procedures, or lending standards
* Discouraging or selectively encouraging applicants with respect to inquiries about or for applications for credit
* Refusing to extend credit or using different standards in determining whether to extend credit
* Varying the terms of credit offered, including the amount, interest rate, duration, or type of loan
* Using different standards to evaluate real estate, or discriminating based upon a property's location
* Treating a borrower differently in servicing a loan or prescribing default remedies

A lender's mortgage credit underwriting policies should be clearly defined, consistently applied through management oversight, and well understood by lending personnel through training and testing. This will help employees understand the importance of consistent treatment of loan applicants.